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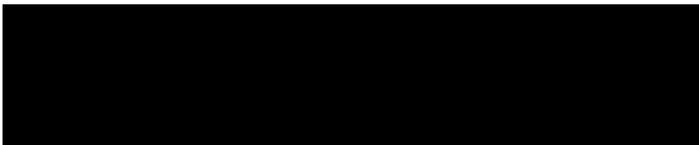
U.S. Department of Homeland Security
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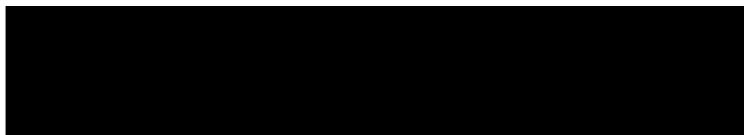
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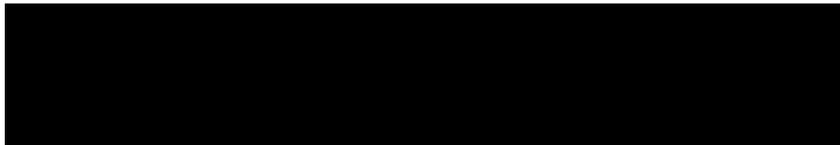
File: WAC 03 119 52636 Office: CALIFORNIA SERVICE CENTER Date: SEP 06 2007

IN RE: Petitioner:
Beneficiary:



Petition: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(L) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(L)

IN BEHALF OF PETITIONER:



INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The Director, California Service Center, denied the petition for a nonimmigrant visa. The matter is now before the Administrative Appeals Office (AAO) on appeal. The AAO will dismiss the appeal.

The petitioner filed this nonimmigrant petition seeking to employ the beneficiary in the position of president to open a new office in the United States as an L-1A nonimmigrant intracompany transferee pursuant to section 101(a)(15)(L) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(L). The petitioner, a corporation organized under the laws of the State of Arizona, claims to be in the furniture business, and alleges that it has a qualifying relationship with Siff Corporation of Pakistan.¹

The director denied the petition concluding that the petitioner failed to establish that the beneficiary had been employed abroad in a primarily executive or managerial capacity.

The petitioner subsequently filed an appeal. The director declined to treat the appeal as a motion and forwarded the appeal to the AAO for review. On appeal, counsel to the petitioner asserts that the beneficiary had been employed abroad in an executive capacity.

To establish eligibility for the L-1 nonimmigrant visa classification, the petitioner must meet the criteria outlined in section 101(a)(15)(L) of the Act. Specifically, a qualifying organization must have employed the beneficiary in a qualifying managerial or executive capacity, or in a specialized knowledge capacity, for one continuous year within three years preceding the beneficiary's application for admission into the United States. In addition, the beneficiary must seek to enter the United States temporarily to continue rendering his or her services to the same employer or a subsidiary or affiliate thereof in a managerial, executive, or specialized knowledge capacity.

The regulation at 8 C.F.R. § 214.2(l)(3) states that an individual petition filed on Form I-129 shall be accompanied by:

- (i) Evidence that the petitioner and the organization which employed or will employ the alien are qualifying organizations as defined in paragraph (l)(1)(ii)(G) of this section.
- (ii) Evidence that the alien will be employed in an executive, managerial, or specialized knowledge capacity, including a detailed description of the services to be performed.
- (iii) Evidence that the alien has at least one continuous year of full-time employment abroad with a qualifying organization within the three years preceding the filing of the petition.

¹It should be noted that, according to the corporate records of the State of Arizona, the petitioner was dissolved on August 8, 2005 and has not applied for reinstatement. Therefore, as the company can no longer be considered a legal entity in the United States, this would call into question its continued eligibility for the benefit sought if the appeal were not being dismissed for those reasons set forth herein.

- (iv) Evidence that the alien's prior year of employment abroad was in a position that was managerial, executive or involved specialized knowledge and that the alien's prior education, training, and employment qualifies him/her to perform the intended services in the United States; however, the work in the United States need not be the same work which the alien performed abroad.

In addition, the regulation at 8 C.F.R. § 214.2(l)(3)(v) states that if the petition indicates that the beneficiary is coming to the United States as a manager or executive to open or to be employed in a new office, the petitioner shall submit evidence that:

- (A) Sufficient physical premises to house the new office have been secured;
- (B) The beneficiary has been employed for one continuous year in the three year period preceding the filing of the petition in an executive or managerial capacity and that the proposed employment involved executive or managerial authority over the new operation; and
- (C) The intended United States operation, within one year of the approval of the petition, will support an executive or managerial position as defined in paragraphs (l)(1)(ii)(B) or (C) of this section, supported by information regarding:
 - (1) The proposed nature of the office describing the scope of the entity, its organizational structure, and its financial goals;
 - (2) The size of the United States investment and the financial ability of the foreign entity to remunerate the beneficiary and to commence doing business in the United States; and
 - (3) The organizational structure of the foreign entity.

The primary issue in this proceeding is whether the beneficiary had been employed abroad in a primarily managerial or executive position.

Section 101(a)(44)(A) of the Act, 8 U.S.C. § 1101(a)(44)(A), defines the term "managerial capacity" as an assignment within an organization in which the employee primarily:

- (i) manages the organization, or a department, subdivision, function, or component of the organization;
- (ii) supervises and controls the work of other supervisory, professional, or managerial employees, or manages an essential function within the organization, or a department or subdivision of the organization;

- (iii) if another employee or other employees are directly supervised, has the authority to hire and fire or recommend those as well as other personnel actions (such as promotion and leave authorization), or if no other employee is directly supervised, functions at a senior level within the organizational hierarchy or with respect to the function managed; and
- (iv) exercises discretion over the day-to-day operations of the activity or function for which the employee has authority. A first-line supervisor is not considered to be acting in a managerial capacity merely by virtue of the supervisor's supervisory duties unless the employees supervised are professional.

Section 101(a)(44)(B) of the Act, 8 U.S.C. § 1101(a)(44)(B), defines the term "executive capacity" as an assignment within an organization in which the employee primarily:

- (i) directs the management of the organization or a major component or function of the organization;
- (ii) establishes the goals and policies of the organization, component, or function;
- (iii) exercises wide latitude in discretionary decision-making; and
- (iv) receives only general supervision or direction from higher level executives, the board of directors, or stockholders of the organization.

The petitioner does not clarify in the initial petition whether the beneficiary had been primarily engaged in managerial duties under section 101(a)(44)(A) of the Act, or primarily executive duties under section 101(a)(44)(B) of the Act. However, on appeal, counsel to the petitioner asserts only that the beneficiary had been employed abroad in an executive capacity. A beneficiary may not claim to be employed as a hybrid "executive/manager" and rely on partial sections of the two statutory definitions. Given the lack of clarity, the AAO will assume that the petitioner is asserting that the beneficiary had been employed abroad either as an executive *or* a manager and will consider both classifications.

The petitioner described the beneficiary's job duties abroad in the Form I-129 as follows: "[The beneficiary] has been partner of the company and supervising the overall operation since the inception of the company in 1989."

On April 4, 2003, the director requested additional evidence. The director requested, *inter alia*, foreign payroll records and an organizational chart for the foreign organization which includes job descriptions for the employees who were subordinate to the beneficiary.

In response, the petitioner submitted payroll records indicating that, in June 2002, the foreign organization employed six people including the beneficiary. The petitioner also submitted an organization chart for the foreign employer which identifies the beneficiary as "executive" and shows him reporting to the "chief

executive." The chart also shows the beneficiary supervising a sales manager, an import manager, and an accounts manager. The sales manager and the import manager are, in turn, each portrayed as supervising one employee. The sales manager's duties were described in an attached job description as follows:

Duties are to develop the plans of a present and future sales, and review company goals. He also observes all activities dealing with outside sales. Negotiates with all distributors and key accounts within the company. Sets sales tactics and performance plans. Monitors and tracks sales as well as profitability throughout [the foreign organization].

The import manager's duties were described in an attached job description as follows:

Handles import and export activities. Keeps accurate and clean records in log book. Communicates with customs for approval/clearance. Works with other manager as well as other departments in order to monitor the status of all imports and exports.

Finally, the petitioner submitted a letter from the foreign organization dated July 16, 2002 in which the beneficiary's overseas job duties were further described as follows:

[The beneficiary's] duties and responsibilities are to check department's performance and efficiency [o]f the department and he is also conduct [sic] performance appraisal after [e]very three months.

The foreign organization also indicated in the July 12, 2002 letter that it employs 12 people. However, the petitioner does not explain why the foreign employer's payroll records for this same timeframe indicate that it actually employed six people.

On May 30, 2003, the director denied the petition. The director concluded that the petitioner failed to establish that the beneficiary had been employed abroad in a primarily executive or managerial capacity.

On appeal, counsel to the petitioner asserts that the beneficiary had been employed abroad in an executive capacity.

Upon review, the petitioner's assertions are not persuasive.

When examining the executive or managerial capacity of the beneficiary, the AAO will look first to the petitioner's description of the job duties. *See* 8 C.F.R. §§ 214.2(l)(3)(ii) and (iv). The petitioner's description of the job duties must clearly describe the duties performed by the beneficiary and indicate whether such duties were either in an executive or managerial capacity. *Id.* As explained above, a petitioner cannot claim that some of the duties of the position entailed executive responsibilities, while other duties were managerial. A beneficiary may not claim to have been employed as a hybrid "executive/manager" and rely on partial sections of the two statutory definitions.

The petitioner's description of the beneficiary's job duties has failed to establish that the beneficiary acted in a "managerial" capacity. In support of its petition, the petitioner has provided a vague and nonspecific description of the beneficiary's duties that fails to demonstrate what the beneficiary did on a day-to-day basis. For example, the petitioner states that the beneficiary supervised "the overall operation" of the foreign business, checked the "department's performance and efficiency," and evaluated employees. The petitioner provided no other details regarding the beneficiary's job duties abroad. The fact that the petitioner has given the beneficiary a managerial title and has prepared a vague job description does not establish that the beneficiary was actually performing managerial duties. Specifics are clearly an important indication of whether a beneficiary's duties are primarily executive or managerial in nature; otherwise meeting the definitions would simply be a matter of reiterating the regulations. *Fedin Bros. Co., Ltd. v. Sava*, 724 F. Supp. 1103 (E.D.N.Y. 1989), *aff'd*, 905 F.2d 41 (2d. Cir. 1990). Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972). Absent a more detailed explanation of the beneficiary's duties abroad, it cannot be confirmed whether he was employed "primarily" in an executive or managerial capacity or whether he "primarily" performed non-qualifying tasks. An employee who "primarily" performs the tasks necessary to produce a product or to provide services is not considered to be "primarily" employed in a managerial or executive capacity. See sections 101(a)(44)(A) and (B) of the Act (requiring that one "primarily" perform the enumerated managerial or executive duties); see also *Matter of Church Scientology International*, 19 I&N Dec. 593, 604 (Comm. 1988).

The petitioner has also failed to establish that the beneficiary supervised and controlled the work of other supervisory, managerial, or professional employees, or managed an essential function of the organization. As explained in the organizational chart, payroll reports, and job descriptions for the subordinate workers, the beneficiary appears to have supervised a staff of five employees. However, the petitioner has not established that any of the employees were primarily engaged in performing supervisory or managerial duties. While the petitioner described the sales manager and the import manager as "managers" and each as supervising a subordinate employee, the job duties ascribed to these workers do not establish that they were employed primarily in a managerial or supervisory capacity. To the contrary, it appears from the job descriptions that these employees were performing the tasks necessary to produce a product or to provide a service. In view of the above, the beneficiary would appear to have been primarily a first-line supervisor of non-professional employees, the provider of actual services, or a combination of both. A managerial employee must have authority over day-to-day operations beyond the level normally vested in a first-line supervisor, unless the supervised employees are professionals. 101(a)(44)(A)(iv) of the Act; see also *Matter of Church Scientology International*, 19 I&N Dec. at 604. Moreover, as the petitioner did not establish the skill level or educational background required to perform the duties of the subordinate positions, the petitioner has not established that the beneficiary managed professional employees.² Therefore, the petitioner has not established that the beneficiary was employed primarily in a managerial capacity.³

²In evaluating whether the beneficiary manages professional employees, the AAO must evaluate whether the subordinate positions require a baccalaureate degree as a minimum for entry into the field of endeavor. Section 101(a)(32) of the Act, 8 U.S.C. § 1101(a)(32), states that "[t]he term *profession* shall include but not be limited to architects, engineers, lawyers, physicians, surgeons, and teachers in elementary or secondary schools, colleges, academies, or seminaries." The term "profession" contemplates knowledge or learning, not

Similarly, the petitioner has failed to establish that the beneficiary acted in an "executive" capacity. The statutory definition of the term "executive capacity" focuses on a person's elevated position within a complex organizational hierarchy, including major components or functions of the organization, and that person's authority to direct the organization. Section 101(a)(44)(B) of the Act. Under the statute, a beneficiary must have the ability to "direct the management" and "establish the goals and policies" of that organization. Inherent to the definition, the organization must have a subordinate level of employees for the beneficiary to direct, and the beneficiary must primarily focus on the broad goals and policies of the organization rather than the day-to-day operations of the enterprise. An individual will not be deemed an executive under the statute simply because they have an executive title or because they "direct" the enterprise as the owner or sole managerial employee. The beneficiary must also exercise "wide latitude in discretionary decision making" and receive only "general supervision or direction from higher level executives, the board of directors, or stockholders of the organization." *Id.* For the same reasons indicated above, the petitioner has failed to establish that the beneficiary was acting primarily in an executive capacity. The job description provided for the beneficiary is so vague that the AAO cannot deduce what the beneficiary did on a day-to-day basis. Moreover, as explained above, the beneficiary appears to have been primarily employed as a first-line supervisor. Finally, the petitioner did not disclose the duties of the beneficiary's supervisory, the "chief executive." Without full disclosure of this employee's job duties, it cannot be confirmed that the beneficiary

merely skill, of an advanced type in a given field gained by a prolonged course of specialized instruction and study of at least baccalaureate level, which is a realistic prerequisite to entry into the particular field of endeavor. *Matter of Sea*, 19 I&N Dec. 817 (Comm. 1988); *Matter of Ling*, 13 I&N Dec. 35 (R.C. 1968); *Matter of Shin*, 11 I&N Dec. 686 (D.D. 1966).

³While the petitioner has not clearly argued that the beneficiary managed an essential function of the organization, the record nevertheless would not support this position even if taken. The term "function manager" applies generally when a beneficiary does not supervise or control the work of a subordinate staff but instead is primarily responsible for managing an "essential function" within the organization. See section 101(a)(44)(A)(ii) of the Act. The term "essential function" is not defined by statute or regulation. If a petitioner claims that the beneficiary is managing an essential function, the petitioner must furnish a written job offer that clearly describes the duties to be performed in managing the essential function, i.e., identify the function with specificity, articulate the essential nature of the function, and establish the proportion of the beneficiary's daily duties attributed to managing the essential function. See 8 C.F.R. § 214.2(1)(3)(ii). In addition, the petitioner's description of the beneficiary's daily duties must demonstrate that the beneficiary manages the function rather than performs the duties related to the function. In this matter, the petitioner has not provided evidence that the beneficiary managed an essential function. The petitioner's vague job description fails to document what proportion of the beneficiary's duties were managerial functions, if any, and what proportion were non-managerial. Also, as explained above, the record establishes that the beneficiary was primarily a first-line manager of non-professional employees and/or was engaged in performing non-qualifying tasks. Absent a clear and credible breakdown of the time spent by the beneficiary performing his duties, the AAO cannot determine what proportion of his duties were managerial, nor can it deduce whether the beneficiary was primarily performing the duties of a function manager. See *IKEA US, Inc. v. U.S. Dept. of Justice*, 48 F. Supp. 2d 22, 24 (D.D.C. 1999).

had the necessary authority to direct the organization to be classified as an executive. Therefore, the petitioner has not established that the beneficiary was employed primarily in an executive capacity.

It is appropriate for Citizenship and Immigration Services (CIS) to consider the size of the foreign organization in conjunction with other relevant factors, such as a employer's small personnel size, the absence of employees who would perform the non-managerial or non-executive operations of the company, or a "shell company" that does not conduct business in a regular and continuous manner. *See, e.g., Systronics Corp. v. INS*, 153 F. Supp. 2d 7, 15 (D.D.C. 2001). The size of a company may be especially relevant when CIS notes discrepancies in the record and fails to believe that the facts asserted are true. *Id.* In this matter, the record contains inconsistencies regarding the beneficiary's employment abroad and the foreign organization's staffing. For example, the foreign organization asserted that it employed 12 people. However, the organizational chart and payroll records only account for 6 employees. The petitioner offers no explanation for this serious inconsistency. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). Doubt cast on any aspect of the petitioner's proof may, of course, lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. *Id.* at 591.

Moreover, the payroll records for the foreign organization indicate that the beneficiary had been employed in Pakistan during the months of March, April, May, and June 2002. The petitioner also claims that the beneficiary is still employed by the foreign organization. However, the beneficiary's Form I-94 and the Form I-129 indicate that the beneficiary was admitted into the United States in B-2 status on March 11, 2002, that he rented an apartment four days later, that this was his most recent entry into the United States, and that he was still in the United States when the instant petition was filed on March 24, 2003. In view of the above, the petitioner's assertion that the beneficiary was employed abroad after March 2002 is simply not credible. If CIS fails to believe that a fact stated in the petition is true, CIS may reject that fact. Section 204(b) of the Act, 8 U.S.C. § 1154(b); *see also Anetekhai v. I.N.S.*, 876 F.2d 1218, 1220 (5th Cir.1989); *Lu-Ann Bakery Shop, Inc. v. Nelson*, 705 F. Supp. 7, 10 (D.D.C.1988); *Systronics Corp. v. INS*, 153 F. Supp. 2d 7, 15 (D.D.C. 2001).

Accordingly, in this matter, the petitioner has failed to establish that the beneficiary had been primarily performing managerial or executive duties abroad, and the petition may not be approved for that reason.

Beyond the decision of the director, the petitioner has not established that the intended United States operation, within one year of the approval of the petition, will support an executive or managerial position as required by 8 C.F.R. § 214.2(l)(3)(v)(C). Specifically, the petitioner failed to sufficiently describe the scope of the entity, its financial goals, and that a sufficient investment had been made in the United States operation. *Id.*

When a new business is established and commences operations, the regulations recognize that a designated manager or executive responsible for setting up operations will be engaged in a variety of activities not normally performed by employees at the executive or managerial level and that often the full range of managerial responsibility cannot be performed. In order to qualify for L-1 nonimmigrant classification during

the first year of operations, the regulations require the petitioner to disclose the business plans and the size of the United States investment, and thereby establish that the proposed enterprise will support an executive or managerial position within one year of the approval of the petition. *See id.* This evidence should demonstrate a realistic expectation that the enterprise will succeed and rapidly expand as it moves away from the developmental stage to full operations, where there would be an actual need for a manager or executive who will primarily perform qualifying duties.

As contemplated by the regulations, a comprehensive business plan should contain, at a minimum, a description of the business, its products and/or services, and its objectives. *See Matter of Ho*, 22 I&N Dec. 206, 213 (Assoc. Comm. 1998). Although the precedent relates to the regulatory requirements for the alien entrepreneur immigrant visa classification, *Matter of Ho* is instructive as to the contents of an acceptable business plan:

The plan should contain a market analysis, including the names of competing businesses and their relative strengths and weaknesses, a comparison of the competition's products and pricing structures, and a description of the target market/prospective customers of the new commercial enterprise. The plan should list the required permits and licenses obtained. If applicable, it should describe the manufacturing or production process, the materials required, and the supply sources. The plan should detail any contracts executed for the supply of materials and/or the distribution of products. It should discuss the marketing strategy of the business, including pricing, advertising, and servicing. The plan should set forth the business's organizational structure and its personnel's experience. It should explain the business's staffing requirements and contain a timetable for hiring, as well as job descriptions for all positions. It should contain sales, cost, and income projections and detail the bases therefor. Most importantly, the business plan must be credible.

Id.

In support of its petition, the petitioner submitted bank statements indicating that, at the time the petition was filed, the petitioner's bank account had a balance of approximately \$2,000.00 and that this money was transferred from the beneficiary's personal account to the petitioner's account on January 24, 2003. While the petitioner also submitted evidence that additional funds were transferred into the petitioner's bank account after the filing of the petition, these deposits are not relevant. The petitioner must establish eligibility at the time of filing the nonimmigrant visa petition. A visa petition may not be approved at a future date after the petitioner or beneficiary becomes eligible under a new set of facts. *Matter of Michelin Tire Corp.*, 17 I&N Dec. 248 (Reg. Comm. 1978). While the record is largely devoid of any evidence describing the new office's proposed start up expenses, \$2,000 would not be a sufficient investment for a retailer and wholesaler of furniture and does not establish a realistic expectation that the enterprise will succeed and rapidly expand as it moves away from the developmental stage to full operations. A \$2,000 investment would not even cover four months of the petitioner's yearly rent obligation under the lease submitted as evidence that the petitioner has secured sufficient physical premises to house the new office.

Moreover, as explained above, the record is largely devoid of any description of the scope or nature of the petitioner's proposed business operation in the United States. The petitioner did not submit a business plan or provide any coherent projections regarding its expenses, products, competitors, or hiring plans. Furthermore, while the petitioner described its proposed business in the Form I-129 as "wholesale/retail furniture sales," counsel to the petitioner described the petitioner's proposed business in the letter dated February 14, 2003 as the importation of chemical goods and other related commodities. Once again, it is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. at 591-92. Doubt cast on any aspect of the petitioner's proof may, of course, lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. *Id.* at 591.

Accordingly, the petitioner has failed to establish that the intended United States operation, within one year of the approval of the petition, will support an executive or managerial position as required by 8 C.F.R. § 214.2(l)(3)(v)(C), and for this additional reason the petition may not be approved.

Beyond the decision of the director, the petitioner has also failed to establish that sufficient physical premises to house the new office have been secured as required by 8 C.F.R. § 214.2(l)(3)(v)(A).

In support of its assertion that sufficient physical premises have been secured, the petitioner submitted a lease dated March 15, 2002. This lease fails to establish that sufficient physical premises have been secured to house the new office for three primary reasons. First, the lease expired on November 30, 2002, over three months before the instant petition was filed. Second, the lease is a residential lease, which, according to paragraph 7, may only be used as a dwelling. Third, the beneficiary is the tenant, not the petitioner, and paragraph 8 prohibits the assignment or sublease of the premises absent the landlord's consent. The record is devoid of any evidence that the landlord has consented to the assignment of this expired, residential lease to the petitioner.

Accordingly, the petitioner has failed to establish that sufficient physical premises to house the new office have been secured as required by 8 C.F.R. § 214.2(l)(3)(v)(A), and the petition may not be approved for this additional reason.

Beyond the decision of the director, the petitioner did not establish that it and the organization which allegedly employed the alien overseas are qualifying organizations as required by 8 C.F.R. § 214(l)(3)(i).

To establish a "qualifying relationship" under the Act and the regulations, the petitioner must show that the beneficiary's foreign employer and the proposed United States employer are the same employer (i.e., one entity with "branch" offices), or related as a "parent and subsidiary" or as "affiliates." *See generally* section 101(a)(15)(L) of the Act; 8 C.F.R. § 214.2(l). A subsidiary is defined in pertinent part as a corporation "of which a parent owns, directly or indirectly, more than half of the entity and controls the entity."

The regulation and case law confirm that ownership and control are the factors that must be examined in determining whether a qualifying relationship exists between United States and foreign entities for purposes of this visa classification. *Matter of Church Scientology International*, 19 I&N Dec. 593 (BIA 1988); *see also*

Matter of Siemens Medical Systems, Inc., 19 I&N Dec. 362 (BIA 1986); *Matter of Hughes*, 18 I&N Dec. 289 (Comm. 1982). In the context of this visa petition, ownership refers to the direct or indirect legal right of possession of the assets of an entity with full power and authority to control; control means the direct or indirect legal right and authority to direct the establishment, management, and operations of an entity. *Matter of Church Scientology International*, 19 I&N Dec. at 595.

In this matter, the petitioner asserts that the foreign organization owns and controls the United States operation. In support of this assertion, the petition submitted various documents, including stock certificates. However, these documents contain serious inconsistencies regarding the petitioner's ownership and control. First, the petitioner submitted the minutes from the annual meeting of the petitioner's shareholders dated December 15, 2002. In this document, the beneficiary, and not the petitioner, is identified as the petitioner's sole stockholder. The petitioner offers no explanation for this serious inconsistency in the record which undermines the petitioner's assertion that it is owned and controlled by the foreign employer. Once again, it is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. at 591-92.

Second, the petitioner offered no evidence, even though specifically requested by the director in the Request for Evidence, that the foreign entity paid for the stock allegedly issued to it in December 2002. As general evidence of a petitioner's claimed qualifying relationship, stock certificates alone are not sufficient evidence to determine whether a stockholder maintains ownership and control of a corporate entity, and the director may reasonably inquire beyond the issuance of paper stock certificates into the means by which stock ownership was acquired. As requested by the director, evidence of this nature should include documentation of monies, property, or other consideration furnished to the entity in exchange for stock ownership. In this matter, the record is devoid of any evidence that the foreign entity paid for the stock issued to it in December 2002. The only evidence of an investment in the United States operation is the transfer of \$2,000 to the petitioner's bank account by the beneficiary in January 2003. Failure to submit requested evidence that precludes a material line of inquiry shall be grounds for denying the petition. 8 C.F.R. § 103.2(b)(14).

Accordingly, the petitioner did not establish that it and the organization which employed the alien overseas are qualifying organizations as required by 8 C.F.R. § 214(l)(3)(i), and for this additional reason the petition may not be approved.

An application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the Service Center does not identify all of the grounds for denial in the initial decision. See *Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd*, 345 F.3d 683 (9th Cir. 2003); see also *Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989) (noting that the AAO reviews appeals on a *de novo* basis).

The petition will be denied for the above stated reasons, with each considered as an independent and alternative basis for denial. When the AAO denies a petition on multiple alternative grounds, a plaintiff can succeed on a challenge only if it is shown that the AAO abused its discretion with respect to all of the AAO's enumerated grounds. See *Spencer Enterprises, Inc.*, 229 F. Supp. 2d at 1043.

WAC 03 119 52636

Page 12

In visa petition proceedings, the burden is on the petitioner to establish eligibility for the benefit sought. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has not been met.

ORDER: The appeal is dismissed.